

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3
4 CINDY J. MEYER,

5 Plaintiff,

6 v.

7
8 WEST VALLEY SCHOOL DISTRICT No.
9 363, et al.,

10 Defendants.

No. CV-06-011-FVS

11 ORDER

12 **THIS MATTER** comes before the Court based upon two motions for
13 summary judgment. One motion has been filed by the West Valley School
14 District No. 363, Paula M. Jeffries, and Douglas Matson. They are
15 represented by Michael E. McFarland, Jr. The other motion has been
16 filed by the State of Washington, Charles Schreck, Nick Hawkinson, and
17 Terry Perkins. They are represented by Assistant Attorney General Amy
18 Clemmons. Plaintiff Cindy Meyer is represented by William J. Powell.

19 **BACKGROUND**

20 Cindy Meyer was employed by West Valley School District No. 363
21 as a school psychologist. The principal of the school in which Ms.
22 Meyer worked suspected that she was taking time off without permission
23 to work at another job. The District reported its suspicions to the
24 Washington Superintendent of Public Instruction ("SPI"), who issued an
25 order suspending her education certificate for a period of sixty days.

1 She appealed, which tolled the order. Eventually, the SPI withdrew
2 the order of suspension and terminated disciplinary proceedings
3 against her. At no time, was her education certificate actually
4 suspended. Ms. Meyer filed an action in state court. The defendants
5 removed the matter to federal court since she is asserting a claim
6 "arising under the Constitution." 28 U.S.C. §§ 1441(b), 1446. Ms.
7 Meyer obtained leave to amend her complaint. Fed.R.Civ.P. 15(a). As
8 amended, it contains two causes of action. To begin with, she alleges
9 that the defendants, except the State of Washington, violated the
10 Fourteenth Amendment by depriving her of a constitutionally protected
11 interest in her education certificate without due process of law. She
12 seeks damages under 42 U.S.C. § 1983. The Court has original
13 jurisdiction over this claim. 28 U.S.C. §§ 1331, 1343. In addition,
14 she alleges that the defendants negligently investigated their
15 suspicions that she left work without permission. She seeks damages
16 under the law of the State of Washington. The Court may exercise
17 supplemental jurisdiction over this claim. 28 U.S.C. § 1337.

18 **DUE PROCESS**

19 Ms. Meyer alleges that the defendants, except the State of
20 Washington, violated the Fourteenth Amendment by depriving her of a
21 constitutionally protected interest in her education certificate
22 without due process of law. In order to establish a due process
23 violation, she must prove three elements: "(1) a liberty or property
24 interest protected by the Constitution; (2) a deprivation of the
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1 interest by the government; and (3) lack of process." *Portman v.*
2 *County of Santa Clara*, 995 F.2d 898, 904 (9th Cir.1993). While she
3 undoubtedly has a constitutionally protected interest in her education
4 certificate, she cannot prove that she was deprived of it. As she
5 concedes, the order suspending her education certificate never took
6 effect. To the contrary, the order was tolled by her timely appeal.
7 During the course of the appeal, the SPI withdrew the order of
8 suspension and terminated disciplinary proceedings. Absent actual
9 suspension of her license, Ms. Meyer cannot establish that she
10 suffered the deprivation of a constitutionally protected interest.
11 This is fatal to her due process claim. It must be dismissed. See
12 *Neal v. Fields*, 429 F.3d 1165, 1167 (8th Cir.2005) (nurse could not
13 prove deprivation where State Board of Nursing investigated a
14 complaint but did not suspend her license); *Baldwin v. Daniels*, 250
15 F.3d 943, 946 (5th Cir.2001) (where the sheriff of a county refused to
16 accept bail bonds from a bondsman, but the bondsman's state license
17 was never suspended or revoked and she was free to issue bonds in
18 other counties, the sheriff's action did not deprive her of a property
19 interest).
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NEGLIGENT INVESTIGATION

22 Ms. Meyer claims the State of Washington, Charles Schreck, Nick
23 Hawkinson, and Terry Perkins may be held liable for negligently
24 investigating the allegations reported by representatives of the West
25 Valley School District No. 363. To date, the Supreme Court of the
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1 State of Washington has not recognized such a claim. Consequently,
 2 this Court must interpret Washington law as it believes the state
 3 Supreme Court would. *See Dias v. Elique*, 436 F.3d 1125, 1129 (9th
 4 Cir.2006); *Gravquick A/S v. Trimble Navigation Int'l Ltd.*, 323 F.3d
 5 1219, 1222 (9th Cir.2003).

6 At a minimum, Ms. Meyer must cite a statute (or perhaps an
 7 administrative regulation) that obligates the SPI to investigate a
 8 complaint that a teacher has engaged in unprofessional conduct. *See*
 9 *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 596, 70 P.3d 954
 10 (2003) (citing *Bennett v. Hardy*, 113 Wn.2d 912, 920, 784 P.2d 1258
 11 (1990)). She places great weight upon RCW 28A.410.095¹ and WAC 180-
 12 86-100(2).² Assuming, for purposes of argument, that these create a
 13 duty to investigate (either individually or in combination), Ms. Meyer
 14 must demonstrate that the Washington Supreme Court would provide a
 15 remedy for the breach of the duty. *See id.* In order to carry this
 16 burden, she must show three things: (1) she is "within the class for
 17 whose 'especial' benefit the statute was enacted"; (2) "legislative
 18 intent, explicitly or implicitly, supports creating . . . a remedy";
 19 and (3) "implying a remedy is consistent with the underlying purpose
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22 ¹This statute states in part, "The superintendent of public
 23 instruction may initiate and conduct investigations as may be
 24 reasonably necessary to establish the existence of any alleged
 25 violations of or noncompliance with this chapter or any rules
 26 adopted under it."

22 ²This regulation states in part, "[T]he initiation of
 23 investigative proceedings shall commence only upon receipt of a
 24 written complaint from a school district . . . superintendent[.]"

1 of the legislation." *Bennett v. Hardy*, 113 Wn.2d 912, 920-21, 784
2 P.2d 1258 (1990).

3 As a general rule, the Washington Supreme Court does not permit
4 negligent-investigation claims against state actors. *M.W.*, 149 Wn.2d
5 at 601. However, there is at least one exception. In *Babcock v.*
6 *State*, 116 Wn.2d 596, 609-10, 809 P.2d 143 (1991), the state Supreme
7 Court implied that children who had been raped by a foster parent
8 could bring a claim against the Washington Department of Social and
9 Health Services ("DSHS") based upon its caseworkers' allegedly
10 negligent failure to investigate the foster parent's background.
11 Then, in *Tyner v. Department of Social and Health Services*, 141 Wn.2d
12 68, 77-82, 1 P.3d 1148 (2000), the state Supreme Court held that a
13 father who had been separated from his children by DSHS caseworkers
14 based upon a complaint that he had abused his children could bring a
15 claim against the caseworkers alleging that their investigation of the
16 complaint was negligent. The *Babcock-Tyner* exception is grounded upon
17 the declaration of legislative purpose set forth in RCW 26.44.010.
18 See *M.W.*, 149 Wn.2d at 597. In those instances in which a person has
19 sought a remedy for a harm that chapter 26.44 RCW was not meant to
20 rectify, the state Supreme Court has refused to expand the *Babcock-*
21 *Tyner* exception even though the person may have suffered harm. *M.W.*,
22 149 Wn.2d at 601 ("A careful reading of the statute's statement of
23 purpose gives no indication that when the legislature created the duty
24 to investigate child abuse, it contemplated protecting children from
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1 all physical or emotional injuries that may come to them directly from
 2 the negligence of DSHS investigators.").

3 Ms. Meyer is not seeking a remedy for an alleged violation of a
 4 duty created by chapter 26.44 RCW. Rather, she is seeking a remedy
 5 for an alleged violation of a duty (arguably) created by RCW
 6 28A.410.095 and WAC 180-86-100(2). In order to qualify for a remedy,
 7 she must cite an expression of legislative intent indicating that RCW
 8 28A.410.095 and WAC 180-86-100(2) were adopted to prevent the harm she
 9 allegedly sustained. *See Bennett*, 113 Wn.2d at 920-21. She has not
 10 done so. There is no reason to think that these provisions were
 11 adopted, even in part, to protect a teacher from suffering the anxiety
 12 and, perhaps, expense of having to defend herself against unfounded
 13 allegations of misconduct. Absent a convincing expression of
 14 legislative intent to that effect, Ms. Meyer cannot satisfy the
 15 *Bennett* test. The Washington Supreme Court would not grant her a
 16 remedy. Thus, neither the State of Washington, nor Charles Schreck,
 17 nor Nick Hawkinson, nor Terry Perkins may be held liable under state
 18 tort law for allegedly conducting a negligent investigation.³

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22 ³Ms. Meyer seems to concede that, given *Corbally v.*
 23 *Kennewick Sch. Dist.*, 94 Wn. App. 736, 740-41, 973 P.2d 1074
 24 (1999), neither West Valley School District No. 363, nor Paula M.
 25 Jeffries, nor Douglas Matson may be held liable for allegedly
 26 conducting a negligent investigation. (Plaintiff's Memorandum in
 Response to Motion for Summary Judgment of Defendants' West
 Valley School District, Paula Jeffries and Douglas Matson, at 5.)
 Even if Ms. Meyer is not making this concession, she has failed
 to lay an adequate foundation for a negligent-investigation claim
 against them.

IT IS HEREBY ORDERED:

1. The summary judgment motion that has been filed by the West Valley School District No. 363, Paula M. Jeffries, and Douglas Matson (**Ct. Rec. 34**) is granted.

2. The summary judgment motion that has been filed by the State of Washington, Charles Schreck, Nick Hawkinson, and Terry Perkins (**Ct. Rec. 83**) is granted.

3. The motion to strike that has been filed by the West Valley School District No. 363, Paula M. Jeffries, and Douglas Matson (**Ct. Rec. 77**) is denied as moot.

4. The motion to strike that has been filed by Cindy Meyer (**Ct. Rec. 103**) is denied as moot.

IT IS SO ORDERED. The District Court Executive is hereby directed to file this order, enter judgment accordingly, furnish copies to counsel, and close this case.

DATED this 23rd day of February, 2007.

s/ Fred Van Sickle
Fred Van Sickle
United States District Judge